

Appl. No. 10/717,775
Amdt. dated September 21, 2006
Reply to Office Action of June 22, 2006

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REMARKS

Applicants have carefully reviewed the Office Action mailed on June 22, 2006. Applicants respectfully traverse all objections, rejections, and assertions made by the Examiner. With this amendment, claims 1, 19, and 37 are amended. No new matter is added. Claims 1-3, 7 and 37 remain pending. Claims 4, 8-13, 15-17 and 19, which were previously withdrawn, are also believed to be pending for the reasons set forth below.

Election/Restrictions

In the April 19, 2006 reply, Applicants indicated an election of species 2, corresponding to Figure 3. An error was made in this election. Applicants actually intended to elect species 1, corresponding to Figure 2. Because of this intention, Applicants withdrew a number of claims from consideration as being readable on what was supposed to be the non-elected species. However, because Applicants actually elected the species shown in Figure 3, at least some the withdrawn claims are readable on the elected species.

Applicants wish to thank the Examiner for the brief telephone conference on August 24, 2006 where this error was discussed. During the telephone conference, Applicants' representative requested that the Examiner consider allowing at least some of the claims withdrawn in Applicants' April 19, 2006 election back into consideration. The Examiner agreed that it would be possible to bring these claims back into consideration and requested that Applicants provide some brief remarks in this reply that indicate which claims should be allowed back into consideration and a brief explanation why they are readable on the elected species.

Applicants believe that claims 4 and 8-19 are readable on the elected species.

Claim 4 recites that the snare loop includes a plurality of proximal legs that are connected to the second end of the swivel. This feature can be seen, for example, in Figure 3. Consequently, this claim appears to be readable on the elected species.

Similarly, independent claim 8 recites a snare loop having a plurality of proximal legs, the legs being coupled to the second end of the swivel. Likewise, this feature can be seen, for example, in Figure 3. Consequently, this claim, as well as claims 9-19 depending therefrom

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appear to be readable on the elected species. Please note that claim 19 has been amended to correct a typographical error.

Please note that in Applicants' April 19, 2006 Reply an election was also made to the subspecies 5, shown in Figure 6. Applicants believe that of claims 4 and 8-19, claims 4, 8-13, 15-17 and 19 are also readable on the elected subspecies.

In light of the forgoing comments, Applicants respectfully submit that claims 4, 8-13, 15-17 and 19 should be allowed back into this case because they are drawn to the elected species (and subspecies). Applicants believe that in addition to being drawn to the elected species (and subspecies), these claims are believed to be in condition for allowance.

Please note that Applicants have marked the status of claims 4, 8-13, 15-17, and 19 as being "previously presented" instead of withdrawn in the above listing of claims.

Claims Rejection under 35 U.S.C. § 102

Claims 1-3 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith in U.S. Patent No. 6,235,026. Regarding claim 1-3, claim 1 is amended to recite:

1. A surgical snare device, comprising:
 - a tubular sheath having a proximal end region and a distal end region;
 - a shaft extending through and movable relative to the sheath, the shaft having a distal end that is disposed adjacent to the distal end region of the sheath;
 - a swivel having a first end and a second end, the first end being coupled to the distal end of the shaft; and
 - a snare loop coupled to the second end of the swivel, the snare loop being disposed adjacent the distal end region of the tubular sheath.

Smith does not appear to teach or suggest every claim limitation. In particular, Smith does not appear to teach or suggest both a snare loop and a distal end to a shaft that are disposed adjacent to the distal end region of the sheath. Based on this distinction, Applicants respectfully submit that claim 1 is patentable over Smith. Because claims 2-3 depend from claim 1, they are also patentable based on this amendment and because they add significant elements to distinguish them further from the art.

Regarding claim 37, this claim is similarly amended to recite:

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37. A self-orienting snare loop device, comprising:
a tubular sheath having a proximal end region and a distal end region;
a shaft disposed within the sheath, the shaft having a distal end that is disposed adjacent to the distal end region of the sheath;
a handle coupled to the proximal end region of the sheath;
wherein the handle include a sliding member, the sliding member being coupled to the shaft such that movement of the sliding member results in movement of the shaft;
a swivel coupled to the distal end of the shaft;
wherein the swivel is disposed adjacent the distal end region of the sheath; and
a snare loop coupled to the swivel, the snare loop being disposed adjacent the distal end region of the tubular sheath.

For similar reasons to what is set forth above, Applicants respectfully submit that amended claim 37 is distinguishable from Smith.

Claims Rejection under 35 U.S.C. § 103

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Fleury, Jr. in U.S. Patent No. 4,326,530. Please note that on page 3 of the Office Action, the Examiner made reference to "Kline", which is not identified in the rejection. It is presumed that the Examiner is referring to Kline in U.S. Patent No. 5,376,094. However, it is not clear if the Examiner is rejecting claim 7 in view of the combination of (a) Smith and Fleury, Jr.; (b) Smith and Kline; or (c) Smith, Fleury, Jr., and Kline. This uncertainty, however, is believed moot due to the amendment to claim 1 described above. As indicated above, amended claim 1 is believed to be patentably distinct from Smith. Neither Fleury, Jr. nor Kline overcomes this deficiency. Therefore, claim 1 is believed to be patentable over any combination of Smith, Fleury, Jr., and Kline. Because claim 7 depends from claim 1, it is patentable for the same reasons as claim 1 and because it adds significant elements to distinguish it further from the art.

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Conclusion

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

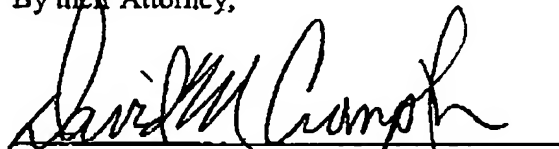
Respectfully submitted,

John A. Griego et al.

By their Attorney,

Date: _____

9/21/06


David M. Crompton, Reg. No. 36,772
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, MN 55403-2420
Telephone: (612) 677-9050
Facsimile: (612) 359-9349